

CHAPTER 1246
FIRE AND CASUALTY INSURANCE

H. F. 221

AN ACT relating to fire and casualty insurance companies.

Be It Enacted by the General Assembly of the State of Iowa:

- 1 SECTION 1. Section five hundred fifteen point thirty-five (515.35),
2 subsection four (4), Code 1966, is hereby amended as follows:
3 1. By striking from lines four (4), five (5), and six (6) the words
4 "worth at least double the amount loaned thereon and secured there-
5 by." and inserting in lieu thereof the words " , provided that at the
6 date of acquisition the total indebtedness secured by such lien shall not
7 exceed seventy-five percent of the value of the property upon which
8 it is a lien."
9 2. By striking from line thirteen (13) the word "one-half" and
10 inserting in lieu thereof the words "seventy-five percent".

Approved February 12, 1970.

CHAPTER 1247
INSOLVENT INSURERS

S. F. 1102

AN ACT to avoid financial loss due to the insolvency of an insurer.

Be It Enacted by the General Assembly of the State of Iowa:

- 1 SECTION 1. **Scope.** This Act shall apply to all kinds of direct insur-
2 ance, except life, title, surety, disability, credit, mortgage guaranty,
3 and ocean marine insurance.
- 1 SEC. 2. **Definitions.** As used in this Act unless the context other-
2 wise requires:
- 3 1. "Association" means the Iowa insurance guaranty association
4 created pursuant to section three (3) of this Act.
- 5 2. "Commissioner" means the commissioner of insurance of this
6 state.
- 7 3. "Covered claim" means an unpaid claim, including one for un-
8 earned premiums, which arises out of and is within the coverage of
9 an insurance policy to which this Act applies issued by an insurer,
10 if such insurer becomes an insolvent insurer after the effective date of
11 this Act and one of the following conditions exists:
12 a. The claimant or insured is a resident of this state at the time of
13 the insured event.
14 b. The property from which the claim arises is permanently located
15 in this state.
- 16 Such term does not include any amount due any reinsurer, insurer,
17 insurance pool, or underwriting association, as subrogation recoveries
18 or otherwise.
- 19 4. "Insolvent insurer" means an insurer authorized to transact in-
20 surance in this state, either at the time the policy was issued or when
21 the insured event occurred, which is determined to be insolvent by a
22 court of competent jurisdiction.

23 5. "Member insurer" means any person, except a county mutual,
24 fraternal, or nonprofit service plan, who:

25 a. Writes any kind of insurance to which this Act applies, includ-
26 ing the exchange of reciprocal or interinsurance contracts.

27 b. Is licensed to transact insurance in this state.

28 6. "Net direct written premiums" means direct gross premiums
29 written in this state on insurance policies to which this Act applies,
30 less return premiums and dividends paid or credited to policyholders
31 on such direct business. Such term does not include premiums on
32 contracts between insurers or reinsurers.

33 7. "Person" means any individual, corporation, partnership, asso-
34 ciation, or voluntary organization.

1 **SEC. 3. Creation of the association.** There is created a nonprofit
2 unincorporated legal entity to be known as the Iowa insurance guar-
3 anty association. All member insurers as defined in section two (2),
4 subsection five (5) of this Act shall be and remain members of the
5 association as a condition of their authority to transact insurance in
6 this state. The association shall perform its functions under a plan of
7 operation established and approved pursuant to section six (6) of
8 this Act and shall exercise its powers through a board of directors
9 established under section four (4) of this Act.

1 **SEC. 4. Board of directors.** The board of directors of the associa-
2 tion shall consist of not less than five nor more than nine persons
3 serving terms as established in the plan of operation. The members
4 of the board shall be selected by member insurers subject to the ap-
5 proval of the commissioner. Vacancies on the board shall be filled
6 for the remaining period of the term in the same manner as initial
7 appointments. If no members are selected within sixty days after the
8 effective date of this Act, the commissioner may appoint the initial
9 members of the board of directors.

10 In approving selections to the board the commissioner shall con-
11 sider among other things whether all member insurers are fairly rep-
12 resented.

13 Members of the board may be reimbursed from the assets of the
14 association for expenses incurred by them as members of the board of
15 directors.

1 **SEC. 5. Duties and powers of the association.**

2 1. The association shall:

3 a. Be obligated to the extent of the covered claims existing prior to
4 the determination of insolvency and arising within thirty days after
5 the determination of insolvency, or before the policy expiration date
6 if less than thirty days after the determination, or before the insured
7 replaces the policy or on request effects cancellation if he does so
8 within thirty days of the determination. Such obligation shall include
9 only that amount of each covered claim which is in excess of one hun-
10 dred dollars and less than three hundred thousand dollars, except
11 that the association shall pay the full amount of any covered claim
12 arising out of a workmen's compensation policy. In no event shall
13 the association be obligated to a policyholder or claimant in an amount
14 in excess of the face amount of the policy from which the claim arises.

15 *b.* Be deemed the insurer to the extent of its obligations on the
16 covered claims and to such extent shall have all rights, duties, and
17 obligations of the insolvent insurer as if the insurer had not become
18 insolvent.

19 *c.* Assess member insurers amounts necessary to pay the obliga-
20 tions of the association under paragraph *a* of this subsection subse-
21 quent to an insolvency, the expenses of handling covered claims subse-
22 quent to an insolvency, the cost of examinations under section ten (10)
23 of this Act, and other expenses authorized by this Act. The assess-
24 ment of each member insurer shall be in the proportion that the net
25 direct written premiums of the member insurer for the preceding cal-
26 endar year bear to the net direct written premiums of all member
27 insurers for the preceding calendar year. Each member insurer shall
28 be notified of the assessment not later than thirty days before it is
29 due. No member insurer may be assessed in any year an amount
30 greater than two percent of that member insurer's net direct written
31 premiums for the preceding calendar year. If the maximum assess-
32 ment, together with the other assets of the association, does not provide
33 in any one year an amount sufficient to make all necessary payments,
34 the funds available shall be prorated and the unpaid portion shall be
35 paid as soon as funds become available. The association may exempt
36 or defer, in whole or in part, the assessment of any member insurer
37 if the assessment would cause the member insurer's financial state-
38 ment to reflect amounts of capital or surplus less than the minimum
39 amounts required for a certificate of authority by any jurisdiction in
40 which the member insurer is authorized to transact insurance. Each
41 member insurer may set off against any assessment, authorized pay-
42 ments made on covered claims and expenses incurred in the payment
43 of such claims by the member insurer.

44 *d.* Investigate claims brought against the fund and adjust, compro-
45 mise, settle, and pay covered claims to the extent of the association's
46 obligation and deny all other claims.

47 *e.* Notify such persons as the commissioner directs under section
48 seven (7), subsection two (2), paragraph *a* of this Act.

49 *f.* Process claims through its employees or through one or more
50 member insurers or other persons designated as servicing facilities.
51 Designation of a servicing facility is subject to the approval of the
52 commissioner, but such designation may be declined by a member
53 insurer.

54 *g.* Reimburse each servicing facility for obligations of the associa-
55 tion paid by the facility and for expenses incurred by the facility
56 while handling claims on behalf of the association, and pay the other
57 expenses of the association authorized by this Act.

58 2. The association may:

59 *a.* Appear in, defend, and appeal any action on a claim brought
60 against the association.

61 *b.* Employ or retain persons necessary to handle claims and perform
62 other duties of the association.

63 *c.* Borrow funds necessary to effect the purposes of this Act in
64 accord with the plan of operation.

65 *d.* Sue or be sued.

66 *e.* Negotiate and become a party to contracts necessary to carry
67 out the purpose of this Act.

68 *f.* Perform such other acts necessary or proper to effectuate the
69 purposes of this Act.

70 *g.* If, at the end of any calendar year, the board of directors finds
71 that the assets of the association exceed its liabilities as estimated by
72 the board of directors for the coming year, refund to the member
73 insurers in proportion to the contribution of each that amount by
74 which the assets of the association exceed the liabilities.

1 **SEC. 6. Plan of operation.**

2 1. The association shall submit a plan of operation to the commis-
3 sioner, together with any amendments necessary or suitable to assure
4 the fair, reasonable, and equitable administration of the association.
5 The plan of operation and any amendments shall become effective
6 upon approval in writing by the commissioner.

7 If the association fails to submit a suitable plan of operation within
8 ninety days following the effective date of this Act or if at any time
9 thereafter the association fails to submit suitable amendments to the
10 plan, the commissioner shall, after notice and opportunity for hearing,
11 adopt and promulgate reasonable rules necessary or advisable to
12 effectuate the provisions of this Act. Such rules shall continue in
13 force until modified by the commissioner or superseded by a plan
14 submitted by the association and approved by the commissioner.

15 2. All member insurers shall comply with the plan of operation.

16 3. The plan of operation shall:

17 *a.* Establish the procedures for performance of all the duties and
18 powers of the association under section five (5) of this Act.

19 *b.* Establish procedures for managing assets of the association.

20 *c.* Establish the amount and method of reimbursing members of
21 the board of directors under section four (4) of this Act.

22 *d.* Establish procedures by which claims may be filed with the asso-
23 ciation and establish acceptable forms of proof of covered claims.
24 Notice of claims to the receiver or liquidator of the insolvent insurer
25 shall be deemed notice to the association or its agent and a list of
26 such claims shall be periodically submitted to the association or sim-
27 ilar organization in another state by the receiver or liquidator.

28 *e.* Establish regular places and times for meetings of the board of
29 directors.

30 *f.* Establish procedures for keeping records of all financial trans-
31 actions of the association, its agents, and the board of directors.

32 *g.* Provide that any member insurer aggrieved by any final action
33 or decision of the association may appeal to the commissioner within
34 thirty days after the action or decision.

35 *h.* Establish procedures for submission to the commissioner of
36 selections for the board of directors.

37 *i.* Contain additional provisions necessary or proper for the execu-
38 tion of the duties and powers of the association.

39 4. The plan of operation may provide that any or all duties and
40 powers of the association, except those under section five (5), subsec-
41 tion one (1), paragraph *c* and section five (5), subsection two (2),
42 paragraph *c* of this Act, are delegated to a person which performs or

43 will perform functions similar to those of this association in two or
44 more states. Such person shall be reimbursed as a servicing facility
45 and shall be paid for performance of any other functions of the asso-
46 ciation. A delegation under this subsection shall take effect only
47 with the approval of both the board of directors and the commis-
48 sioner, and may be made only to a person which extends protection not
49 substantially less favorable and effective than that provided by this
50 Act.

1 **SEC. 7. Duties and powers of the commissioner.**

2 1. The commissioner shall:

3 *a.* Notify the association of the existence of an insolvent insurer
4 not later than three days after he receives notice of the determina-
5 tion of the insolvency.

6 *b.* Upon request of the board of directors, provide the association
7 with a statement of the net direct written premiums of each member
8 insurer.

9 2. The commissioner may:

10 *a.* Require that the association notify the insureds of the insolvent
11 insurer and any other interested parties of the determination of insol-
12 vency and of their rights under this Act. Such notification shall be
13 by mail at their last known address, but if sufficient information for
14 notification by mail is not available, notice by publication in a news-
15 paper of general circulation is sufficient.

16 *b.* Suspend or revoke, after notice and opportunity for hearing, the
17 certificate of authority to transact insurance in this state of any
18 member insurer which fails to pay an assessment when due or fails
19 to comply with the plan of operation. As an alternative, the commis-
20 sioner may levy a fine on any member insurer which fails to pay an
21 assessment when due. Such fine shall not exceed five percent of the
22 unpaid assessment per month, except that no fine shall be less than
23 one hundred dollars per month.

24 *c.* Revoke the designation of any servicing facility if he finds
25 claims are being processed unsatisfactorily.

26 3. Any final action or order of the commissioner under this Act
27 shall be subject to judicial review in the district court.

1 **SEC. 8. Effect of paid claims.**

2 1. Any person recovering under this Act shall be deemed to have
3 assigned his rights under the policy to the association to the extent
4 of his recovery from the association. Every insured or claimant
5 seeking the protection of this Act shall cooperate with the association
6 to the same extent as such person would have been required to cooper-
7 ate with the insolvent insurer. The association shall have no cause
8 of action against the insured of the insolvent insurer for any sums it
9 has paid out.

10 2. The receiver, liquidator, or statutory successor of an insolvent
11 insurer shall be bound by settlements of covered claims by the asso-
12 ciation or a similar organization in another state. The court having
13 jurisdiction shall grant such claims priority equal to that to which
14 the claimant would have been entitled in the absence of this Act
15 against the assets of the insolvent insurer. The expenses of the asso-

16 ciation or similar organization in handling claims shall be accorded
17 the same priority as the liquidator's expenses.

18 3. The association shall periodically file with the receiver or liqui-
19 dator of the insolvent insurer statements of the covered claims paid
20 by the association and estimates of anticipated claims on the associa-
21 tion, which statements shall preserve the rights of the association
22 against the assets of the insolvent insurer.

1 **SEC. 9. Nonduplication of recovery.**

2 1. Any person having a claim against his insurer, under any pro-
3 vision in his insurance policy, which is also a covered claim shall be
4 required to exhaust first his right under the policy. Any amount pay-
5 able on a covered claim under this Act shall be reduced by the amount
6 of recovery under the claimant's insurance policy.

7 2. Any person having a claim which may be recovered under more
8 than one insurance guaranty association or its equivalent shall seek
9 recovery first from the association of the place of residence of the
10 insured. However, if such claim is a first party claim for damage to
11 property with a permanent location recovery shall be first sought
12 from the association of the location of the property; and if such claim
13 is a workmen's compensation claim recovery shall be first sought from
14 the association of the residence of the claimant. Any recovery under
15 this Act shall be reduced by the amount of the recovery from any
16 other insurance guaranty association or its equivalent.

1 **SEC. 10. Prevention of insolvencies.** To aid in the detection and
2 prevention of insurer insolvencies:

3 1. The board of directors shall, upon majority vote, notify the
4 commissioner of any information indicating any member insurer may
5 be insolvent or in a financial condition hazardous to the policyholders
6 or the public.

7 2. The board of directors may, upon majority vote, request that
8 the commissioner order an examination of any member insurer
9 which the board in good faith believes may be in a financial condition
10 hazardous to the policyholders or the public. Within thirty days of
11 the receipt of such request, the commissioner shall begin such examina-
12 tion. The examination may be conducted as a national association
13 of insurance commissioners' examination or may be conducted by such
14 persons as the commissioner designates. The cost of such examination
15 shall be paid by the association and the examination report shall be
16 treated as are other examination reports. In no event shall such
17 examination report be released to the board of directors prior to its
18 release to the public, but this shall not preclude the commissioner
19 from complying with subsection three (3) of this section. The com-
20 missioner shall notify the board of directors when the examination
21 is completed. The request for an examination shall be kept on file
22 by the commissioner but it shall not be open to public inspection prior
23 to the release of the examination report to the public.

24 3. The commissioner shall report to the board of directors when
25 he has reasonable cause to believe that any member insurer examined
26 or being examined at the request of the board of directors may be
27 insolvent or in a financial condition hazardous to the policyholders or
28 the public.

29 4. The board of directors may, upon majority vote, make reports
30 and recommendations to the commissioner upon any matter germane
31 to the solvency, liquidation, rehabilitation, or conservation of any
32 member insurer. Such reports and recommendations are not public
33 documents.

34 5. The board of directors may, upon majority vote, make recom-
35 mendations to the commissioner for the detection and prevention of
36 insurer insolvencies.

37 6. The board of directors shall, at the conclusion of any insurer
38 insolvency in which the association was obligated to pay covered
39 claims, prepare a report on the history and causes of such insolvency,
40 based on the information available to the association, and submit
41 such report to the commissioner.

1 **SEC. 11. Examination of the association.** The association is sub-
2 ject to examination and regulation by the commissioner. The board
3 of directors shall submit, not later than March thirtieth of each
4 year, a financial report for the preceding calendar year in a form
5 approved by the commissioner.

1 **SEC. 12. Tax exemption.** The association is exempt from payment
2 of all fees and all taxes levied by this state or any of its subdivisions,
3 except taxes levied on real or personal property.

1 **SEC. 13. Recognition of assessments in rates.** The rates and
2 premiums charged for insurance policies to which this Act applies
3 shall include amounts sufficient to recoup a sum equal to the amounts
4 paid to the association by the member insurer less any amounts re-
5 turned to the member insurer by the association, and such rates shall
6 not be deemed excessive as a result of containing such recoupment
7 allowances.

1 **SEC. 14. Immunity.** There is no liability, and no cause of action
2 of any nature shall arise against any member insurer, the association,
3 its agents or employees, the board of directors, the commissioner, or
4 his representatives, for any reasonable action taken by them in
5 the performance of their duties and powers under this Act.

1 **SEC. 15. Stay of proceedings.** All proceedings in which the in-
2 solvent insurer is a party in any court in this state shall be stayed
3 for sixty days from the date the insolvency is determined to permit
4 proper defense by the association of all pending causes of action.

1 **SEC. 16. Title.** This Act shall be known and may be cited as the
2 Iowa Insurance Guaranty Association Act.

Approved February 20, 1970.